

Message Text

PAGE 01 STATE 183621

12

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TO AMEMBASSY ACCRA

C O N F I D E N T I A L STATE 183621

E.O. 11652: N/A

TAGS: ETRN, GH, US

SUBJECT: GOG DISCRIMINATION AGAINST US SHIPPING LINE

REF: A) STATE 1770064; B) ACCRA 5443; C) ACCRA 5546

THERE FOLLOWS TEXT OF REVISED AIDE MEMOIRE:

1. THE EMBASSY OF THE UNITED STATES OF AMERICA WISHES TO DRAW ATTENTION TO AN URGENT AND SERIOUS PROBLEM WHICH HAS ARISEN IN OUR MARITIME RELATIONS. UNFORTUNATELY, EFFORTS TO RESOLVE THIS PROBLEM INFORMALLY OR AT THE PURELY COMMERCIAL LEVEL HAVE BEEN UNSUCCESSFUL.

2. THE EMBASSY UNDERSTANDS THE SITUATION TO BE AS FOLLOWS. SINCE THE END OF 1971 FARRELL STEAMSHIP LINES, AN AMERICAN-FLAG CARRIER SERVING THE US-GHANA TRADE SINCE

CONFIDENTIAL

PAGE 02 STATE 183621

1947, HAS BEEN DENIED COCOA EXPORT SHIPMENTS ORIGINATING IN GHANA. ALL EXPORTS TO THE UNITED STATES HAVE BEEN TRANSPORTED BY THE GHANA-FLAG BLACK STAR LINES OR THE VOLTA STEAMSHIP LINES, A CHARTER OPERATION OWNED BY GHANAIAAN

CITIZENS. MOREOVER, IN THE PERIOD PRIOR TO 1972, EXCEPT FOR NOVEMBER AND DECEMBER, 1971, FARRELL LINES CARRIED ONLY SMALL AMOUNTS OF COCOA AND DID SO ONLY BECAUSE OF THE UNAVAILABILITY OF SAILINGS BY EITHER BLACK STAR OR VOLTA LINES. THAT FARRELL LINES LIFTED A SUBSTANTIAL AMOUNT OF COCOA DURING THE LAST TWO MONTHS OF 1971 IS ATTRIBUTABLE TO THE COMPANY HAVING VESSELS IN POSITION WHILE GHANA-FLAG OR CHARTERED VESSELS OF VOLTA LINES WERE TIED UP IN AMERICAN PORTS DUE TO A LONGSHOREMEN'S STRIKE.

3. AS THE RESULT OF BEING DENIED COCOA EXPORT SHIPMENTS, FARRELL LINES FILED A COMPLAINT WITH THE FEDERAL MARITIME COMMISSION THAT THE LINE WAS BEING DISCRIMINATED AGAINST BY THE GOVERNMENT OF GHANA WHICH CONTROLS COCOA EXPORT SHIPMENTS THROUGH THE GHANA COCOA MARKETING BOARD. THE FEDERAL MARITIME COMMISSION WAS REQUESTED TO TAKE ACTION ON BEHALF OF FARRELL LINES PURSUANT TO THE AUTHORITY UNDER SECTION 19(B) OF THE MERCHANT MARINE ACT OF 1920 WHICH READS AS FOLLOWS:

"TO MAKE RULES AND REGULATIONS AFFECTING SHIPPING IN THE FOREIGN TRADE NOT IN CONFLICT WITH LAW AND ORDER TO ADJUST OR MEET GENERAL OR SPECIAL CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE, WHETHER IN ANY PARTICULAR TRADE OR UPON ANY PARTICULAR ROUTE OR IN COMMERCE GENERALLY, WHICH ARISE OUT OF OR RESULT FROM FOREIGN LAWS, RULES OR REGULATIONS OR FROM COMPETITIVE METHODS OR PRACTICES EMPLOYED BY OWNERS, OPERATORS, AGENTS, OR MASTERS OF VESSELS OF A FOREIGN COUNTRY."

4. PRIOR TO THE FEDERAL MARITIME COMMISSION CONSIDERING ACTION UNDER SECTION 19(B) OF THE MERCHANT MARINE ACT OF 1920, THE DEPARTMENT OF STATE INSTRUCTED THE EMBASSY TO DISCUSS THE EXCLUSION OF FARRELL LINES FROM THE CARRIAGE OF COCOA EXPORTS WITH GHANAIAAN AUTHORITIES IN THE HOPES OF RESOLVING THE DIFFICULTY IN A MUTUALLY SATISFACTORY MANNER. REPRESENTATIONS MADE BY THE EMBASSY IN CONFIDENTIAL

PAGE 03 STATE 183621

CONJUNCTION WITH FARRELL LINES, HOWEVER, WERE UNSUCCESSFUL AND THE FEDERAL MARITIME COMMISSION WAS LEFT WITH NO ALTERNATIVE BUT TO REEXAMINE THE SITUATION PURSUANT TO ITS STATUTORY RESPONSIBILITIES UNDER UNITED STATES LAW. A COMPLETE REVIEW OF THE PROBLEM WAS MADE. THE FEDERAL MARITIME COMMISSION CONCLUDED THAT COCOA EXPORT SHIPMENTS MADE BY THE GHANA COCOA MARKETING BOARD ARE CONTROLLED BY THE GOVERNMENT OF GHANA WHICH IS FOLLOWING A DE FACTO DISCRIMINATORY POLICY FAVORING GHANA FLAG OR CHARTER VESSELS TO THE DETRIMENT OF THE AMERICAN-FLAG CARRIER FARRELL LINES.

5. IN ORDER THAT THE GHANAIAAN GOVERNMENT MAY BE FULLY

AWARE OF THE POLICY AND LEGAL ASPECTS OF THIS MATTER AS
THEY APPEAR TO THE UNITED STATES GOVERNMENT, THE EMBASSY

WISHES TO DRAW ATTENTION TO THE CONSIDERATIONS WHICH
FOLLOW.

6. US SHIPPING LEGISLATION AND MARITIME POLICIES ARE
BASED ON THE PREMISE THAT REASONABLE COMPETITION AND
NONDISCRIMINATION AMONG CARRIERS BEST SERVE THE
DEVELOPMENT OF EFFICIENT SHIPPING SERVICES AND THE
EXPANSION OF TRADE. WE SEEK TO HAVE A MERCHANT MARINE
CAPABLE OF CARRYING A SUBSTANTIAL PART OF OUR FOREIGN
TRADE ON A COMPETITIVE BASIS, AND WE RECOGNIZE THAT MANY
OTHER NATIONS HAVE THE SAME ASPIRATION. WITHIN UNCTAD
WE HAVE SUPPORTED THE DESIRE OF DEVELOPING COUNTRIES TO
HAVE A SUBSTANTIAL AND INCREASING PARTICIPATION IN THE
CARRIAGE OF THEIR FOREIGN TRADE AND AGREED THAT THEY
SHOULD BE ABLE TO ADOPT "SUCH MEASURES AS MAY BE APPRO-
PRIATE TO PERMIT THEIR SHIPOWNERS TO COMPETE IN THE
INTERNATIONAL FREIGHT MARKET AND THUS CONTRIBUTE TO A
SOUND DEVELOPMENT OF SHIPPING." THERE IS, UNFORTUNATELY,
ABSENCE OF ANY INTERNATIONAL AGREEMENT OR CONSENSUS
ON WHAT MEASURES MAY BE "APPROPRIATE". HOWEVER, WHEN
GOVERNMENTS INTERVENE BY ADOPTING MEASURES TO PROMOTE
THEIR MERCHANT MARINE, WE BELIEVE THAT A BASIC PRINCIPLE
MUST BE THE RECOGNITION BY SUCH GOVERNMENTS THAT TRADE IS
A TWO-WAY STREET. THEREFORE, THE FOREIGN COMMERCE AND
THE ARRANGEMENTS FOR TRANSPORTING IT, WHICH MAY BE
CONFIDENTIAL

PAGE 04 STATE 183621

AFFECTED BY GOVERNMENT MEASURES, ARE OF EQUAL CONCERN TO
THE TRADING PARTNER, WHOSE TRADE AND SHIPPING INTERESTS
ARE EQUALLY INVOLVED.

7. WE WOULD NOT PRESUME UPON THE RIGHT OF THE GOVERN-
MENT OF GHANA TO DIRECT THE ROUTING OF CARGO WHICH IS
GOVERNMENT-CONTROLLED IN THE TRADITIONAL SENSE (I.E.
GOVERNMENT PROPERTY OR GOVERNMENT-FINANCED OR -IMPELLED
CARGO). HOWEVER GOVERNMENT CONTROL OF CARGO TAKES ON A
NEW DIMENSION WHEN IT IS APPLIED TO THE MAJOR EXPORT
COMMODITY OF A GIVEN COUNTRY. THE GHANA COCOA MARKETING
BOARD PRESUMABLY FOLLOWS COMMERCIAL PRACTICES, IN MOST
RESPECTS, IN THE EXPORT SELLING OF COCOA. HOWEVER IT
DEPARTS FROM COMMERCIAL PRACTICE WHEN IT ROUTES ITS
CARGO ONLY ON NATIONAL FLAG OR NATIONALLY-OWNED VESSELS.
THIS PRACTICE OBVIOUSLY IS DETRIMENTAL TO AMERICAN
SHIPPING INTERESTS AND MAY ALSO BE DETRIMENTAL TO TRADE
INTERESTS.

8. IN THE LIGHT OF COCOA BEING THE MAJOR EXPORT
COMMODITY OF GHANA, AND IN LIGHT OF ITS ESSENTIALLY
COMMERCIAL CHARACTER, THE UNITED STATES GOVERNMENT

BELIEVES THAT AMERICAN SHIPPING LINES SHOULD HAVE THE SAME OPPORTUNITY TO CARRY THIS CARGO AS DO GHANAIAN SHIPPING

LINES, AS THEY IN FACT ENJOYED IN YEARS PRIOR TO 1972.

9. THE FEDERAL MARITIME COMMISSION IS STATUTORILY REQUIRED UNDER SECTION 19(B) TO TAKE COUNTERVAILING MEASURES AGAINST ANY FOREIGN GOVERNMENT OR OTHER ACTIONS WHICH ARE DISCRIMINATORY AGAINST US TRADE AND SHIPPING INTERESTS. MOREOVER, AS AN INDEPENDENT REGULATORY AGENCY, THE COMMISSION IS NOT SUBJECT TO CONTROL OF THE US EXECUTIVE BRANCH ON THIS MATTER.

10. THE FEDERAL MARITIME COMMISSION PRESENTLY HAS UNDER CONSIDERATION IMPLEMENTING REGULATIONS FOR SECTION 19(B) WHICH SET FORTH POSSIBLE COUNTERVAILING MEASURES THAT THE COMMISSION MAY CONSIDER ADOPTING SHOULD A FOREIGN GOVERNMENT NOT CEASE DISCRIMINATING IN FAVOR OF ITS SHIPPING INTERESTS. THESE INCLUDE A) IMPOSITION OF CONFIDENTIAL

PAGE 05 STATE 183621

EQUALIZING FEES OR CHARGES; B) LIMITATIONS OF SAILINGS TO AND FROM US PORTS OR OF THE AMOUNT OR TYPE OF CARGO DURING A SPECIFIC PERIOD; C) SUSPENSION IN WHOLE OR IN PART OF ANY OR ALL TARIFFS FILED WITH THE COMMISSION FOR CARRIAGE TO AND FROM US PORTS; AND D) ANY OTHER ACTION THAT THE COMMISSION FIND NECESSARY AND APPROPRIATE IN THE PUBLIC INTEREST TO ADJUST OR MEET ANY CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES. THE LATTER COULD CONCEIVABLY INCLUDE A COMPLETE EMBARGO ON THE DISCHARGE IN US PORTS OF CARGOES FROM A DISCRIMINATING COUNTRY IF DEEMED APPROPRIATE BY THE COMMISSION.

11. THE VERY PURPOSE OF THESE IMPLEMENTING REGULATIONS IS TO CLARIFY FOR ALL CONCERNED THE TYPE OF ACTION THE COMMISSION MAY BE FORCED TO TAKE UNDER ALREADY EXISTING LEGISLATIVE AUTHORITY IN THE FACE OF CONTINUING DISCRIMINATION AGAINST US TRADE AND SHIPPING INTERESTS BY A FOREIGN GOVERNMENT. THEY ARE NOT DIRECTED AT ANY SINGLE COUNTRY ALONE, AND CERTAINLY NOT JUST AT GHANA ALONE. HERETOFORE, THERE HAVE BEEN A NUMBER OF INSTANCES WHERE THE FEDERAL MARITIME COMMISSION AND ITS PREDECESSORS WERE COMPELLED TO INVOKE SECTION 19(B). ORDERS WERE ADOPTED AND ISSUED IN 1935 AND 1954 TO COUNTERMAND FOREIGN SHIPPING LINE DISCRIMINATION. ACTION WAS ALSO TAKEN IN 1946, 1961 AND 1964 AGAINST THE FLAG VESSELS OF ECUADOR, CHILE AND URUGUAY, RESPECTIVELY, TO COUNTERACT DISCRIMINATORY LEGISLATION AND PRACTICES. IN EACH INSTANCE, IT WAS UNNECESSARY TO IMPLEMENT THE ORDER BECAUSE THE PARTY CONCERNED REMOVED OR CEASED THE DISCRIMINATORY MEASURE OR PRACTICE ONCE THE ORDER WAS

CIRCULATED.

12. THE PRESENT PRACTICE OF THE GOVERNMENT OF GHANA WHICH RESULTS IN FARRELL LINES BEING COMPLETELY EXCLUDED FROM TRANSPORTING COCOA SHIPMENTS GOES FAR BEYOND ANY POSITION ADVANCED BY THE GROUP OF 77 IN UNCTAD AND THE ABSOLUTE PREFERENCE GIVEN GHANA-FLAG OR CHARTERED VESSELS IN THE SHIPMENT OF COCOA EXPORTS TO THE UNITED STATES IS UNPRECEDENTED. THE USG CONSIDERS THIS PRACTICE CONFIDENTIAL

PAGE 06 STATE 183621

AS UNJUSTLY DISCRIMINATORY AGAINST US SHIPPING LINES AND NOT ONLY IN CONFLICT WITH US LAW AND POLICY, BUT IN CONFLICT WITH THE INTERNATIONAL STANDARD THAT HAS BEEN DISCUSSED IN UNCTAD. THE USG IS OF COURSE MOST ANXIOUS TO AVOID ANY SITUATION WHICH WOULD PROVOKE THE USE OF SECTION 19 ORDERS, BUT WOULD NEVERTHELESS BE REMISS IF IT DID NOT BRING THIS POSSIBILITY TO THE ATTENTION OF THE GHANAIAAN GOVERNMENT. IT IS OUR HOPE THAT IN LIGHT OF THE ABOVE CONSIDERATIONS THE GOVERNMENT OF GHANA WILL RECONSIDER ITS PRESENT POLICY. RUSH

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